

May 29, 2026

The Honorable Sam Graves
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Graves and Ranking Member Larsen:

We write to urge you to amend Sections 1202 and 1218 of the BUILD America 250 Act (BA250) by replacing current language referencing the Advisory Council on Historic Preservation's (ACHP) "Program Comment on Certain Housing, Building, and Transportation Undertakings" with a requirement that state Federal Highway Administration (FHWA) Division Offices and state Departments of Transportation (DOTs) continue to prepare statewide Section 106 programmatic agreements (PAs) to fulfill their obligations under the National Historic Preservation Act (NHPA).

As currently drafted, Section 1202 would undermine and conflict with longstanding, successful federal transportation agency programs that streamline project delivery. This section would erode protections for irreplaceable historic and cultural resources and expose transportation agencies to legal and reputational risk when Section 106 of the NHPA is not applied as intended by Congress. By contrast, requiring states to continue implementing, and updating as appropriate, a programmatic agreement framework will accelerate project delivery while preserving meaningful stakeholder participation and legal integrity.

Section 1202 is a solution in search of a problem. There is no data that shows that historic preservation reviews are driving delays in the vast number of infrastructure projects subject to permitting. In fact, over 98 percent of undertakings do not result in a finding of adverse effect.

A key reason for these efficiencies is the use of PAs, a well-established, legally sound tool for fulfilling Section 106 reviews. PAs offer every efficiency that Section 1202 ostensibly seeks to provide, without the legal and policy deficiencies that Section 1202 would create. The vast majority of FHWA Division Offices and state DOTs already operate under PAs. These agreements have a proven track record, demonstrating that historic preservation review and efficient transportation project delivery are complementary goals that can advance simultaneously.

PAs allow agencies to tailor Section 106 reviews to the specific characteristics of a state's transportation program, establishing tiered review processes and standard treatments. Of particular note, all PAs contain lists of actions exempt from further Section 106 review. These actions are generally small projects that have no or little potential to affect properties listed in or eligible for listing in the National Register of Historic Places. These lists of exempted actions eliminate duplicative project-by-project reviews while retaining oversight where it matters most.

PAs are developed through a consultative process that includes State and Tribal Historic Preservation Officers (S/THPOs) and other interested parties. This ensures that communities, who are most knowledgeable about local historic and cultural resources, have a voice in shaping the review process, reducing disputes later in project delivery. PAs can be amended as programs evolve, allowing state DOTs to update their processes, including lists of exempted actions, without returning to Congress for statutory changes. This makes the PA framework more durable and responsive than a rigid statutory exemption.

A properly executed PA provides FHWA and state DOTs with a clear, negotiated roadmap for Section 106 compliance that has been vetted by SHPOs, THPOs, other consulting parties, and the ACHP. This reduces litigation risk, minimizes delays, and gives project sponsors confidence that their compliance process will withstand review.

On the other hand, Section 1202 as currently drafted, could invite litigation from project opponents challenging whether the Section 106 exemption as written was validly applied, unnecessarily stalling projects for years. FHWA, state DOTs, and local transportation project sponsors would face significant uncertainty about when the exemption applies and whether it will withstand judicial review.

Furthermore, the Section 4(f) regulations (23 C.F.R. Part 774) already provide extensive tools for streamlining Section 4(f) requirements for projects that involve historic sites. The regulations include a list of several exceptions to the requirement for Section 4(f) approvals, including many classes of historic properties. Further, if one of these exemptions cannot be applied to a transportation project, then FHWA and a state DOT can use a *di minimis* impact finding to quickly complete the Section 4(f) process, with minimal documentation. As a result, the current language in Section 1202 is redundant with current practice among transportation agency decision makers.

Most critically, Section 1202 would create an end-run around Section 106 consultation that would deny states, communities, Tribes, and other stakeholders the chance to identify and protect culturally significant properties.

We agree that the Section 106 process can be made more efficient, which is why we support measures that have a proven track record of accelerating projects without undermining the safeguards of Section 106.

For these reasons, we respectfully urge the Committee to strike all provisions in the bill that incorporate, implement, rely upon, or direct guidance based upon the 2024 Program Comment, including Section 1202, amending 23 U.S.C. § 138 and 49 U.S.C. § 303, and references in Section 1218. In its place, the bill should require that FHWA Division Offices and state DOTs negotiate programmatic agreements to fulfill their obligations under Section 106 of the NHPA. Further, these provisions should require other agencies that have a regulatory role in a state's federal transportation program to be signatories to these PAs.

These changes would deliver the streamlining benefits the Committee seeks while honoring Congress's historic commitment to the preservation of America's cultural and historic heritage.

We appreciate the Committee's bipartisan commitment to a strong surface transportation reauthorization and stand ready to work with your offices on legislative language that achieves the shared goals of efficient project delivery and responsible stewardship of our nation's historic resources.

Sincerely,

American Cultural Resources Association

Coalition for Archaeological Synthesis

National Association for Tribal Historic Preservation Officers

National Conference of State Historic Preservation Officers

National Parks Conservation Association

Preservation Action

Society for American Archaeology

Society for Historical Archaeology

Society for Industrial Archeology